

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Comcast Cable Communications, LLC)	CSR 8072-E
)	CSR 8075-E
Petitions for Determination of Effective)	CSR 8078-E
Competition in various Pennsylvania Franchise)	CSR 8079-E
Areas)	

MEMORANDUM OPINION AND ORDER

Adopted: June 3, 2010

Released: June 4, 2010

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications, LLC, hereinafter referred to as “Petitioner,” has filed with the Commission petitions pursuant to Sections 76.7, 76.905(b)(2), 76.905(b)(1) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as “Communities.” Petitioner alleges that its cable systems serving the communities listed on Attachment B and hereinafter referred to as Group B Communities are subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended (“Communications Act”)¹ and the Commission’s implementing rules,² and are therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. (“DirecTV”), and Dish Network (“Dish”). Petitioner additionally claims to be exempt from cable rate regulation in the Communities listed on Attachment C and hereinafter referred to as Group C Communities because the Petitioner serves fewer than 30 percent of the households in those franchise areas. The petitions are unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 623(1) of the Communications Act and Section 76.905 of the Commission’s rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁵ For the reasons set forth below, we grant the petitions based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

¹See 47 U.S.C. § 543(a)(1).

²47 C.F.R. § 76.905(b)(2) and 47 C.F.R. § 76.905(b)(1).

³47 C.F.R. § 76.906.

⁴See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

⁵See 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

A. The Competing Provider Test

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”) each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area;⁶ this test is otherwise referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.⁷

5. Turning to the first prong of this test, it is undisputed that these Group B Communities are “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.⁸ The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.⁹ We further find that Petitioner has provided sufficient evidence to support its assertion that potential customers in the Group B Communities are reasonably aware that they may purchase the service of these MVPD providers.¹⁰ The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming¹¹ and is supported in this petition with copies of channel lineups for both DIRECTV and Dish.¹² Also undisputed is Petitioner’s assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Group B Communities because of their national satellite footprint.¹³ Accordingly, we find that the first prong of the competing provider test is satisfied.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area.¹⁴ Petitioner asserts that it is the largest MVPD in most of the Group B Communities.¹⁵ Petitioner

⁶47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁷47 C.F.R. § 76.905(b)(2)(i).

⁸*See* Petitions at 3-4. .

⁹*Mediacom Illinois LLC et al., Eleven Petitions for Determination of Effective Competition in Twenty-Two Local Franchise Areas in Illinois and Michigan*, 21 FCC Rcd 1175 (2006).

¹⁰47 C.F.R. § 76.905(e)(2).

¹¹*See* 47 C.F.R. § 76.905(g). *See also* Petitions at 4-5.

¹²*See* Petitions at 4-5 and Exhibit 2.

¹³*See* Petitions at 3.

¹⁴ On January 5, 2010, Comcast filed an amendment to CSR 8075-E. Comcast stated that it inadvertently omitted a PSID and corresponding CUID that should have been associated with the community of West Hempfield. Comcast submitted a revised Exhibit 1 to the Petition to include PSID 006485 and CUID PA0238 for West Hempfield, in addition to PSID 001871 and CUID PA1319 already identified in the Petition. Further, Comcast noted that although

(continued....)

sought to determine the competing provider penetration in the Group B Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association that identified the number of subscribers attributable to the DBS providers within the Group B Communities on a five digit zip code basis.¹⁶

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁷ as reflected in Attachment B, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Group B Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Group B Communities.

8. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Group B Communities.

B. The Low Penetration Test

9. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if the Petitioner serves fewer than 30 percent of the households in the franchise area; this test is otherwise referred to as the “low penetration” test.¹⁸ Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less than 30 percent of the households in the franchise area.

10. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment C, we find that Petitioner has demonstrated the percentage of households subscribing to its cable service is less than 30 percent of the households in the Group C Communities. Therefore, the low penetration test is also satisfied as to the Group C Communities.

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there are now two PSIDs and two CUIDs associated with West Hempfield, it has a single franchise to serve the entire community.

¹⁵Petitions at 5-6. In those Communities where Comcast is not the largest MVPD, Comcast asserts that it is nonetheless subject to effective competition because in addition to DBS penetration exceeding 15 percent of the occupied households, the number of Comcast subscribers also exceeds 15 percent and the Commission has recognized that in such cases the second prong of the competing provider test is satisfied. *See Charter Communications – Seven Local Franchise Areas in Missouri*, 21 FCC Rcd 1208, 1210 at ¶ 5 (2006).

¹⁶*Id.* at 5-8. Comcast states that because five digit zip codes do not perfectly align with franchise boundaries, it has reduced the reported number of DBS subscribers in each zip code by an allocation ratio (the number of households in the franchise area over the number of households in the zip area). *Id.* at 7. *See, e.g., Comcast of Dallas, L.P.*, 20 FCC Rcd 17968, 17969-70 (2005) (approving of a cable operator’s use of a Media Business Corporation “allocation factor, which reflects the portion of a five digit postal zip code that lies within the border of the City,” to determine DBS subscribership for that franchise area).

¹⁷*Id.* at 8.

¹⁸47 U.S.C. § 543(l)(1)(A).

III. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC, **ARE GRANTED**.

12. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **ARE REVOKED**.

13. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁹

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Senior Deputy Chief, Policy Division, Media Bureau

¹⁹47 C.F.R. § 0.283.

ATTACHMENT A

CSR 8072-E, CSR 8075-E, CSR 8078-E & CSR 8079-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LCC

CSR 8072-E

Communities	CUIDs
Bigler	PA1318
Boggs (Clearfield County)	PA0136
Chester Hill	PA0392
Decatur	PA0393
Franklin	PA3396
Gulich	PA1270
Houtzdale	PA1265
Marion	PA2431
Morris	PA0394
Philipsburg	PA0396
Potter	PA0164
Rush	PA0397
Spring	PA0167
Snyder	PA0029
Taylor	PA2540
Worth	PA2789

CSR 8075-E

Bart	PA1811
Caernarvon	PA2787
Christiana	PA2296
Columbia	PA0303
Conestoga	PA1819
Drumore	PA2555
Earl	PA0276
East Drumore	PA2556
East Petersburg	PA0095
Eden	PA1810
Fulton	PA2558
Lancaster	PA0101
Leacock	PA0277
Little Britain	PA2559
Martic	PA2560
Providence	PA2627
Sadsbury	PA2297
Salisbury	PA1813
West Earl	PA1012
West Hempfield	PA1319
	PA0238
Wrightsville	PA0825

CSR 8078-E

Communities	CUIDs
Bendersville	PA2253
Butler	PA1665
Codorus	PA2339
Dover	PA2452
Franklin (Adams County)	PA2288
Franklintown	PA1332
Freedom	PA2289
Gettysburg	PA0683
Hamilton	PA2767
Hamiltonban	PA2286
Highland	PA2287
Huntington	PA2764
Jackson	PA1944
Latimore	PA2335*
	PA2979
Liberty	PA2285
Manheim	PA2765**
Menallen	PA2254
Monaghan	PA2680
Mt. Joy	PA2332
Mt. Pleasant	PA2331
New Salem	PA1362
North Codorus	PA1044
Oxford	PA2768**
Paradise	PA2453
Reading	PA2334
Seven Valleys	PA1141
Shrewsbury	PA1931
Straban	PA1620
Tyrone	PA2447
Union	PA2448**
Warrington	PA2349
Washington	PA2449

CSR 8079-E

Manheim	PA3129**
Oxford	PA2409**
Union	PA3126**

*Comcast operates in these franchise areas under a single franchise.

**Comcast operates in these franchise areas under a single franchise and the Franchise Areas are served by more than one principal headend.

ATTACHMENT B

CSR 8072-E, CSR 8075-E, CSR 8078-E & CSR 8079-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

CSR 8072-E

Communities	CUIDs	CPR*	2000 Census Households	Estimated DBS Subscribers
Bigler	PA1318	33.45%	547	183
Boggs (Clearwater)	PA0136	52.31%	736	385
Chester Hill	PA0392	23.31%	399	93
Decatur	PA0393	29.50%	1,210	357
Gulich	PA1270	26.84%	529	142
Houtzdale	PA1265	30.26%	380	115
Marion	PA2431	22.36%	322	72
Morris	PA0394	33.33%	1,224	408
Phillipsburg	PA0396	22.25%	1,375	306
Potter	PA0164	52.09%	1,267	660
Rush	PA0397	24.13%	1,359	328
Snyder	PA0029	33.31%	1,348	449
Spring	PA0167	18.40%	2,456	452
Taylor	PA2540	32.19%	292	94
Worth	PA2789	31.31%	313	98

CSR 8075-E

Communities	CUIDs	CPR*	2000 Census Households	Estimated DBS Subscribers
Bart	PA1811	24.63%	820	202
Caernarvon	PA2787	17.41%	1,269	221
Christiana	PA2296	21.93%	383	84
Columbia	PA0303	18.45%	4,287	791
Conestoga	PA1819	19.87%	1,374	273
Drumore	PA2555	41.41%	739	306
East Drumore	PA2556	30.24%	1,055	319
East Petersburg	PA0095	18.79%	1,708	321
Eden	PA1810	30.28%	578	175
Fulton	PA2558	43.56%	932	406
Lancaster	PA0101	15.41%	20,933	3,226
Little Britain	PA2559	33.00%	1,115	368
Martic	PA2560	29.25%	1,713	501
Providence	PA2627	23.75%	2,387	567
Sadsbury	PA2297	21.25%	880	187
Salisbury	PA1813	17.31%	3,027	524
West Hempfield	PA1319 PA0238	18.87%	5,427	1,024
Wrightsville	PA0825	23.45%	955	224

CSR 8078-E

Communities	CUIDs	CPR*	2000 Census Households	Estimated DBS Subscribers
Bendersville	PA2253	45.54%	202	92
Butler	PA1665	47.70%	979	467
Franklin (Adams)	PA2288	48.52%	1,651	801
Franklinton	PA1332	39.34%	211	83
Freedom	PA2289	39.94%	328	131
Gettysburg	PA0683	35.85%	2,541	911
Hamilton	PA2767	38.38%	740	284
Hamiltonban	PA2286	43.17%	827	357
Highland	PA2287	36.28%	317	115
Latimore	PA2335 PA2979	61.16%	914	559
Liberty	PA2285	45.21%	407	184
Manheim	PA2765	47.05%	1,084	510
Monaghan	PA2680	34.45%	807	278
Mount Joy	PA2332	37.28%	1,191	444
Mount Pleasant	PA2331	35.33%	1,616	571
New Salem	PA1362	17.44%	258	45
North Codorus	PA1044	31.67%	2,924	926
Oxford	PA2768	36.78%	1,694	623
Reading	PA2334	42.87%	1,803	773
Seven Valleys	PA1141	40.42%	188	76
Shrewsbury	PA1931	37.69%	2,157	813
Straban	PA1620	36.16%	1,687	610
Tyrone	PA2447	40.89%	785	321
Union	PA2448	32.96%	1,074	354
Warrington	PA2349	39.36%	1,702	670

Communities	CUIDs	CPR*	2000 Census Households	Estimated DBS Subscribers
Washington	PA2449	42.36%	890	377

CSR 8079-E

Communities	CUIDs	CPR*	2000 Census Households	Estimated DBS Subscribers
Manheim	PA3129	47.05%	1,084	510
Ford	PA2409	36.78%	1,694	623
Union	PA3126	32.96%	1,074	354

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT C

CSR 8072-E, CSR 8075-E & CSR 8078-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

CSR 8072-E

Communities	CUIDs	Franchise Area Households	Cable Subscribers	Penetration Percentage
Boggs (Clearfield)	PA0136	1,056	190	17.99%
Franklin	PA3396	184	15	8.15%
Marion	PA2431	322	73	22.67%
Potter	PA0164	1,267	276	21.78%
Worth	PA2789	313	72	23.00%

CSR 8075-E

Communities	CUIDs	Franchise Area Households	Cable Subscribers	Penetration Percentage
Bart	PA1811	820	195	23.78%
Caenarvon	PA2787	1,269	305	24.03%
Drumore	PA2555	739	190	25.71%
Earl	PA0276	2,019	546	27.04%
Leacock	PA0277	1,426	389	27.28%
West Earl	PA1012	2,201	253	11.49%
West Hempfield	PA1319 PA0238	5,284	1,350	25.55%

CSR 8078-E

Communities	CUIDs	Franchise Area Households	Cable Subscribers	Penetration Percentage
Codorus	PA2339	1,344	115	8.56%
Dover	PA2452	6,999	637	9.10%
Huntington	PA2764	831	121	14.56%
Jackson	PA1944	2,281	71	3.11%

Communities	CUIDs	Franchise Area Households	Cable Subscribers	Penetration Percentage
Menallen	PA2245	1,077	118	10.96%
Paradise	PA2453	1,313	193	14.70%
Tyrone	PA2447	785	183	23.31%
Warrington	PA2349	1,702	265	15.57%